



**MODERNISING LEGAL PROCEEDINGS:  
AN OVERVIEW OF TECHNOLOGICAL  
INNOVATIONS IN THE EVIDENCE  
(AMENDMENT) ACT 2023**

**AUTHOR  
HALIMAT HUSSAIN**

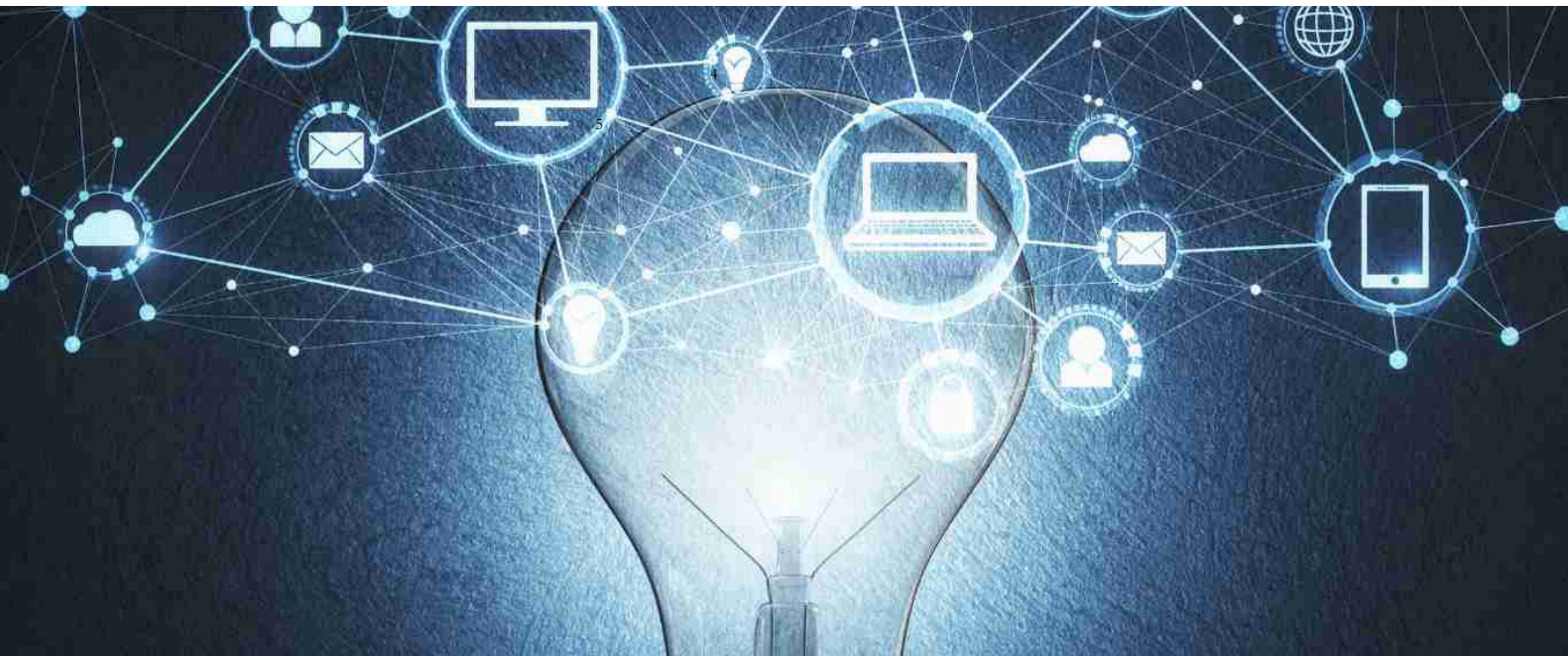
*Associate*

## Introduction

On 12 June 2023, the President of the Federal Republic of Nigeria signed the Evidence Act (Amendment) Act 2023 (the "Amendment Act") into law.

This Act is not intended to repeal the Evidence Act 2011 ('Principal Act') but to introduce, identify, and authenticate the applicability of certain emerging technological advancements in evidence and oath-taking in Nigeria.

This article discusses the significant innovations in the Amendment Act, such as electronic records, digital signatures, the admissibility of electronic records etc., and their impacts on judicial proceedings in Nigeria.



### Notable Technological Innovations Introduced by the Act.

1. Electronic Records and Admissibility of Information in Electronic Form<sup>1</sup>
2. Authentication of electronic record<sup>2</sup>
3. Digital signature<sup>3</sup>
4. Administration of oath via electronic means<sup>4</sup>
5. Illiterate or blind jurat<sup>5</sup>
6. Electronic Gazette ; and<sup>6</sup>

---

1. Section 2 (a-f) of the Evidence Amendment Act 2023

2. Section 3 of the Evidence (Amendment) Act 2023

3. ibid

4. Section 5 of the Evidence (Amendment) Act 2023

5. Section 8 of the Evidence (Amendment) Act 2023 introduced a new paragraph (ba)

6. Section 9 of the Evidence (Amendment) Act 2023

### **1) Electronic Record and Admissibility of Information in Electronic Form.**

Sections 2 and 3 of the Amendment Act, amended the provisions of section 84 of the Principal Act on computer-generated evidence by introducing the phrase “electronic record” after “document” and or “statement” as contained in the Principal Act to expand the forms and scope of computer-generated evidence. Previously, computer-generated documents could be used as evidence under the Principal Act. To do so, a party had to show that the computer creating these documents was functioning correctly during its usage and that the document came from regularly supplied information to the computer. However, with the Amendment Act, there is now a broader acceptance of electronic information and documents as admissible evidence.

The Amendment Act interpreted electronic record to mean data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm<sup>7</sup>. Examples of electronic records include e-mail messages, word-processed documents, electronic spreadsheets, and digital images<sup>8</sup>.

The Amendment Act introduces a commendable innovation in allowing the admissibility of information in electronic form. This is particularly beneficial in today's digital age, where information is easily shared and obtained through the internet and emerging technologies. One key advantage is the convenience it provides to litigants and counsel, enabling them to present documents in their original electronic format during legal proceedings, and eliminating the need for unnecessary conversions to hard copies for admissibility. Additionally, the amendment extends the application of Section 84(2)(b) of the Principal Act, enabling the use of electronic records to verify the accuracy of computer-generated information. This expansion allows for a more thorough assessment of the alignment between the generated information and the data originally fed into the computer during the relevant period.

### **2) Authentication of Electronic Records**

The provision of the Amendment Act allows the maker of an electronic record to authenticate it by affixing his digital signature or any electronic authentication technique which is considered reliable or specified by the Act.

In determining reliability, a digital signature or electronic authentication is considered trustworthy if the signature or authentication data is directly linked to the person who applied it, and no one else. Additionally, any changes made to the digital signature or authenticated information are detectable after application. The reliability criteria also include fulfilling any other conditions set forth by the Act<sup>9</sup>.

### **3) Digital Signature**

A digital signature is one of the innovations introduced under the Amendment Act. It is an electronically generated signature which is attached to an electronically transmitted document to verify its contents and the sender's identity<sup>10</sup>.

---

7 ibid.

8.Olefhile Mosweu, Forget Chaterera-Zambuko “Industry Use Cases on Blockchain Technology Applications in IoT and the Financial Sector” available <https://www.igi-global.com/chapter/blockchain-technology-for-records-management-in-botswana-and-zimbabwe/273809> accessed on 17 August 2023.

9. Ibid

10.Section 10 of the Evidence Amendment Act.

The maker of an electronic record who affixes his secure digital signature needs no further proof. However, where there is contention as to whether the digital signature affixed to an electronic record belongs to the signatory, then evidence must be led to prove that such digital signature belongs to no other person but the signatory.

#### **4) Administration of Oath via Electronic Means**

The recent amendment also allows for deposition of affidavits electronically through audio-visual means. These electronically sworn affidavits can be presented in court and the courts are obligated to recognize and admit them for any intended purpose. In the context of filing, these electronically sworn affidavits are treated as either the original or an official copy.

This signifies a significant shift in the administration of oaths in Nigeria, eliminating the necessity for a deponent to be physically present before a Commissioner for Oath when swearing an affidavit.

By extension, this advancement benefits not only the judiciary but also private practitioners like Notaries Public who can now notarise documents in real-time using various platforms such as Google Meet, Microsoft Teams, Zoom, Skype, and similar tools. This not only adds value to their services but also aligns with international best practices.

#### **5) Illiterate or Blind Jurat<sup>11</sup>**

The recent amendment further broadened the scope of the provisions on illiterate or blind jurat in the Principal Act by introducing a new paragraph (ba) to Section 119(2)(b) of the Evidence Act 2011.

In essence, Section 119 of the Evidence Act 2011 outlines that when the deponent is an illiterate or blind person, the affidavit must explicitly mention this fact and should be accompanied by a jurat. Subsection 2(b) specifies that the jurat should include details such as the date of the swearing and the location where it occurred.

With the addition of the new paragraph (ba), when dealing with affidavits pertaining to illiterate or blind jurats taken through audio-visual means, the electronic record should indicate the specific audio-visual method used and the date of its application.

For clarification, audio-visual communication is interpreted as the ability to see, hear, and communicate with another individual in real time using<sup>12</sup>

---

11. Jurat is a latin word which means “to swear”. An illiterate jurat is a certification added to an affidavit or deposition by a witness stating when and before what authority the deposition or affidavit was made and that the person affected by such deposition or affidavit, though an illiterate has understood the meaning of the contents of such deposition. It is usually associated with civil cases. (P. 299, paras. D-F) – Dayo v State (2019) 2 NWLR (Pt. 1656) 281.

12. Section 10 of the Evidence Amendment Act.



## 6) Electronic Gazette

The Amendment Act introduces the term ‘Electronic Gazette’, which refers to an official gazette published in electronic format. A significant change is made in Section 225 of the Principal Act, stating that when the law dictates the publication of information such as rules, regulations, notifications, or similar matters in the Federal Government Gazette, this requirement is now fulfilled if the information is published in an electronic gazette.<sup>13</sup>

Additionally, the Minister of Justice/Attorney General of the Federation is granted the authority to establish these regulations. These regulations play a crucial role by setting additional conditions that determine whether specific classes of evidence are admissible under the Evidence Amendment Act.

Section 9 of the Evidence Amendment Act.

This would also mean that certain types of evidence will be accepted in legal proceedings if they meet the conditions specified in these regulations.<sup>14</sup>

## Conclusion

In conclusion, the Evidence Amendment Act 2023 marks a significant stride towards modernizing the country’s legal framework. By ushering in the era of digital evidence, it not only streamlines processes but addresses longstanding gaps. With its implementation, Nigeria can look forward to a more equitable and technologically advanced era of legal proceedings, fostering trust and confidence in the legal system.

---

13. Section 9 of the Evidence Amendment Act.

14. Ibid.

## AUTHORS



### HALIMAT HUSSAIN

Associate

Commercial Litigation and Dispute  
Resolution

E: [hhussain@alp.company](mailto:hhussain@alp.company)